



Examining Issues of Quality and Standards of Geographical Indications in Relation to the Migration of Communities

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Abstract

A decline in the quality and standard of goods or products may occur as a result of changing natural factors if people migrate within a community and the terms “kind”, “style”, or “type,” are used in conjunction with newly created geographical indications. This complicates the task of ensuring the quality of goods or products that have been remanufactured using terms associated with newly created geographical indications but are of lower quality than goods from the original geographic origin. Consequently, the public is misled regarding the product’s origin. It is possible to use geographical indications in newly manufactured products based solely on traditional knowledge and reputation of products other than rice, silk, wine, and spirits in the event of community relocation; however, controlling the quality or standards of newly manufactured products is difficult. This paper examines the legal issues that arise when the terms “kind”, “style”, or “type”, or similar words are used in conjunction with geographical indications in the context of community immigration. In the event of community migration, the paper proposes that registering goods’ quality and standardization, as well as obtaining permission to use the terms “kind”, “style”, or “type”, or similar words or equivalents, is critical to establishing a standardized system and criteria for protecting such products.

Keywords: Geographical Indication, Quality and Standard, Migration, TRIPs Agreement, “Kind, Style, or Type”

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การพิจารณาปัญหาคุณภาพและมาตรฐาน ของสิ่งบ่งชี้ทางภูมิศาสตร์ ที่เกี่ยวข้องกับการย้ายถิ่นของชุมชน

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บทคัดย่อ

การลดลงของคุณภาพและมาตรฐานของสินค้าหรือผลิตภัณฑ์อาจเกิดขึ้นจากการเปลี่ยนแปลงปัจจัยทางธรรมชาติหากผู้คนอพยพภายในชุมชนและใช้คำว่า “ชนิด” “ลักษณะ” หรือ “ประเภท” ร่วมกับสิ่งบ่งชี้ทางภูมิศาสตร์ที่สร้างขึ้นใหม่ สิ่งนี้ทำให้การรับรองคุณภาพของสินค้าหรือผลิตภัณฑ์ที่ผลิตซ้ำโดยใช้เงื่อนไขที่เกี่ยวข้องกับสิ่งบ่งชี้ทางภูมิศาสตร์ที่สร้างขึ้นใหม่ แต่มีคุณภาพต่ำกว่าสินค้าจากแหล่งกำเนิดทางภูมิศาสตร์เดิมซับซ้อนขึ้น ซึ่งส่งผลให้ประชาชนเข้าใจผิดเกี่ยวกับที่มาของผลิตภัณฑ์ เป็นไปได้ที่จะใช้สิ่งบ่งชี้ทางภูมิศาสตร์ในผลิตภัณฑ์ที่ผลิตขึ้นใหม่โดยอาศัยภูมิปัญญาท้องถิ่นและชื่อเสียงของผลิตภัณฑ์อื่นในกรณีที่มีการย้ายถิ่นฐานของชุมชนที่ไม่ใช่ชาว ผ้าไหม ไวน์ และสุราเท่านั้น อย่างไรก็ตาม การควบคุมคุณภาพหรือมาตรฐานของผลิตภัณฑ์ที่ผลิตขึ้นใหม่นั้นทำได้ยาก เมื่อใช้คำว่า “ชนิด” “รูปแบบ” หรือ “ประเภท” หรือคำที่คล้ายกันร่วมกับสิ่งบ่งชี้ทางภูมิศาสตร์ในบริบทของการย้ายถิ่นฐานของชุมชน บทความนี้จะอภิปรายปัญหาทางกฎหมายที่เกิดขึ้นในกรณีการย้ายถิ่นของชุมชน บทความนี้เสนอว่าการขึ้นทะเบียนคุณภาพและมาตรฐานของสินค้า เช่นเดียวกับการได้รับอนุญาตให้ใช้คำว่า “ชนิด” “รูปแบบ” หรือ “ประเภท” หรือคำที่คล้ายกันหรือเทียบเท่า มีความสำคัญต่อการสร้างระบบที่เป็นมาตรฐานและหลักเกณฑ์ในการคุ้มครองผลิตภัณฑ์ดังกล่าว

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Introduction

At the moment, geographical indications play a significant role in consumer purchasing decisions, as their characteristics and quality, as a form of intellectual property, can be compared to trademarks in terms of reputation and product quality. As a result, consumers consider such factors when making purchases. This is because products that bear trademarks or geographical indications typically enjoy a favorable reputation and have a high commercial value. Geographical indications are not only associated with and linked to trademarks; they are also associated with and linked to traditional knowledge. Chaiya salted eggs from ducks raised in Chaiya district are a good example of the relationship between traditional knowledge and geographical indications, as they are produced using a process that is based on the wisdom of Chaiya people. As demonstrated by this example, Chaiya salted egg is a geographical indication derived from the body of knowledge known as indigenous wisdom. Geographical indication is thus a right that should be protected on moral and economic grounds as a result of the application of specialized knowledge and unique factors in the geographical origin of the person who produces the geographical indication in that community as a community right.

When considering geographical indications that rely on natural factors from geographic sources in conjunction with the knowledge of community members in producing products, it is clear that when production knowledge is divorced from the specific factors of the geographic source, it is impossible to produce a product of comparable quality to the actual geographic source production. The use of French geographical names for Champagne produced by French immigrants in the United States is an example of such a controversy. The United States and France have been at odds over the usage of French geographical names for Champagne. The act applies to individuals who live in the Champagne City and are entitled to use the Champagne name as a geographical indication for the distinctive wine products produced in the Champagne City with a climate conducive to cultivating grapes that were used as the primary raw material for winemaking in Champagne's signature wines, and who later immigrated to the United States and brought the Champagne winemaking process with them. The process of producing wine from the city of Champagne in the United States has been referred to as "Made in the same way as Champagne" or "Same as Champagne," which is a semi-generic term for wines produced outside of the geographical location where champagne is produced.

This can lead to consumers being misled about the true origin and quality of the Champagne product. The act establishes a distinction between the body of knowledge pertaining to winemaking and the geographical origins designated as geographical indications as a condition for their protection. This dispute had such a profound effect on France's commercial economy that France petitioned the US to cease using France's geographical name on its goods. (Raustiala & Munzer, 2007b)

As a result of the dispute between France and the United States, and in order to comply with the TRIPs Agreement's terms, Thailand has adopted the TRIPs Agreement's minimum standards by stipulating criteria for the protection of geographical indications relating to the use of words in conjunction with geographical indication products in the Ministerial Regulation Prescribing List of Specific Goods and Rules and Methods for Use of Similar or Identical Geographical Indication B.E. 2547 (2004). Taking into account the current state of the social sphere in Thailand, migration within communities is increasing; the majority of this migration is internal, and the majority of it is rural to urban migration. Even though there is currently no debate over the right to use an apostrophe in the event of a relocation of migrants and the migrants using the body of knowledge in the production of geographical indication products is established in new geographical sources, considering the number of geographical indication products registered annually. As can be seen, geographical indication protection criteria are critical. Thus, if appropriate guidelines are established to prevent future issues arising from the use of geographical indications, they will assist in resolving issues that may affect community rights if the term is used in conjunction with geographical indication products in such instances.

Research Objectives

The purpose of this paper is to examine the legal issues surrounding the protection of geographical indications when the terms "kind," "style," or "type," or similar terms are used in conjunction with geographical indications in the context of community immigration. Additionally, this study was conducted to propose a solution to legal issues regarding the protection of geographical indications in the case of community migration through the use of the terms "kind," "style," or "type", or any other term or phrase similar to a geographical indication in goods produced in another geographic source to achieve clarity and protect consumers from confusion and delusions regarding the source and the actual quality of geographical indications.

Research Methodology

Qualitative research is used in this study to gather information from a variety of sources, including books, textbooks, legal journals, academic articles from various academic journals, newspapers, research reports, research results, theses, and electronic media related to the protection of geographical indications in order to arrive at a conclusion.

Literature Review

In this part, there are three critical aspects will be discussed. Begin with a review of the Nature of Geographical Indications, followed by an explanation of the true origin of the goods or geographical indication used in translation or accompanied by terms such as “kind,” “style,” or “type”, “imitation”, or similar expressions. Following that, the protection of geographical indications under the TRIPs Agreement will be examined, and the final section of this part will discuss the implications of community immigration on geographic indication protection.

Nature of Geographical Indications

A geographical indication (GI) is a sign applied to products that originate from a particular geographical area and have characteristics or a reputation unique to that area. A sign must identify a product as being from a specific location in order to function as a geographical indication. Additionally, the product’s qualities, characteristics, and reputation should be primarily attributable to its origin. Due to the fact that the qualities are determined by the geographical location of production, there is an unmistakable connection between the product and its origins. (Laodusit, W., 1998)

A product’s quality, reputation, or other characteristic can be directly linked to its geographic origin, according to the World Trade Organization’s (WTO) 1995 Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs), which defines “Geographical Indications” (GIs) as “indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographic origin.” Agricultural products, foodstuffs, wine and spirit beverages, handicrafts, and industrial products are typically designated with geographical indications. A few examples

of geographical indications from the United States include: “FLORIDA,” “IDAHO,” and “WASHINGTON STATE” for apples, respectively.

When the WTO TRIPs negotiations came to a close in 1994, the governments of all WTO member countries agreed to establish a set of fundamental standards for the protection of geographical indications throughout the world. The TRIPs agreement imposes, in effect, two fundamental obligations on WTO member governments in relation to geographical indications: According to article 22 of the TRIPs Agreement, all governments must provide legal protection in their domestic laws for the owner of a geographical indication registered in their country against the use of marks that mislead the public about the geographical origin of the goods. This includes prohibiting the use of a geographical name that, while literal, “falsely represents” the origin of the product.

According to article 23 of the TRIPs Agreement, all governments must grant the owners of geographical indications the right to prohibit the use of the geographical indication to identify wines that do not originate in the geographical area designated by the geographical indication. This is true even when the public is not misled, when there is no unfair competition, and when the true origin of the good is indicated or the geographical indication is accompanied by terms such as “kind”, “type”, “style”, “imitation”, or similar expressions. Similarly, geographical indications identifying spirits must be protected.

In some ways, geographical indications can be thought of as a subset of registered trademarks. Geographical indications perform the same functions as trademarks because, like trademarks, they serve the same functions as source-identifiers, quality guarantees, and valuable business interests. (Eakyokaya, 2004 p. 15) However, the holder of a protected geographical indication cannot prevent another party from manufacturing a product using the same techniques as those specified in the standards for that indication. Generally, protection for a geographical indication is obtained through the acquisition of a right over the sign that serves as the indication.

Geographical indication registrations are not subject to a specific period of validity under a number of *sui generis* legislations. This means that the protection afforded to a registered geographical indication will continue to be valid unless and until the registration is revoked. In general, geographical indications registered as collective and certification marks are protected for ten-year periods that are renewable. The right to use a protected

geographical indication is reserved for producers located within the defined geographical area who adhere to the product's specific manufacturing conditions.

Actual origin of the goods or the geographical indication used in translation or accompanied by expressions like “kind,” “style,” or “type”, or the like

According to the obligation arising from article 23, paragraph 1 of TRIPs that provides for additional protection for geographical indications identifying wines or spirits, states that:

Each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as “kind”, “type”, “style”, “imitation”, or the like.

The purpose of geographical indications protection is to prevent legitimate competitors from using a place name as a generic descriptor for their product in order to gain an unfair advantage. That is why the geographical indications law protects against uses that are not misleading. Please keep in mind that geographical indications cannot be used by unauthorized producers “even if the true origin of the product is indicated or if the protected name is translated or accompanied by an expression such as “style,” “type,” “method,” “as produced in,” “imitation,” or, “similar.””¹

This includes anyone who obtained the product directly or indirectly from traditional or local producers. Other persons are prohibited from affixing a registered geographical indication or a similar indication to products belonging to the classification to which the registration pertains, or to their packages, containers, or invoices, with certain exceptions, including those for prior trademarks and prior uses. The prohibition does not require misrepresenting the geographical origin of the product, and “similar” indications include, according to the legislation's implementing regulation, indications used in translation or accompanied by terms such as “kind,” “type,” “style,” “imitation,” or the like. (Raustiala, K., & Munzer, S. R. 2007)

¹ World Trade Organization, Trade negotiation committee, TN/C/W/52, 19 July 2008.

In other words, uses of a geographical indication that have no chance of misleading consumers due to their use in conjunction with words that emphasize their generic nature remain prohibited. The terms “California champagne” and “Parmesan style cheese” are prohibited. Additionally, the use of flags, monuments, or even picturesque village scenes on packaging is prohibited if the product does not originate in the location referenced by the image.

In order to demonstrate the quality control and standardization of products produced from geographic sources recognized as good and with a specific flavor, such as Parma Ham or Prosciutto di Parma in Italian, use an example of an Italian product protected as a geographical indication and well-known on the world market. Pork hind leg that is permitted and raised in a designated area and must be produced in Parma, Emilia-Romagna. The pigs are fed a diet consisting of butter milk and corn starch, and the pork knuckles are seasoned, salted, and air dried, resulting in a 30% weight loss. After layering the ham to soften it, it is marinated for 10-12 months. Pig breeders, ham producers, and Parma Ham traders (Consorzio del Prosciutto di Parma) have formed Geographical Indication protection registries with the goal of preventing the imitation of Parma Ham products. and to ensure that geographical indications on products sold in other countries are genuine. In countries including the European Union, India, China, Australia, and South Africa, the Parma Ham has been registered as a geographical indication. Pelacci Callisto SNC di Pelacci Giuliano, Eli Prosciutti S.P.A., Prosciuttificio Rovagnati SRL, and Tizzano V.P. are examples of Italian Parma Ham manufacturers that leverage Geographical Indication Registration in conjunction with branding. (International Institute for Asia Pacific Studies. 2012) Article 13 of European Community Regulation No. 1151/2012 prohibits the European Community’s Member States from using the terms “kind”, “type”, “method”, “as manufactured in”, “imitation”, or similar in relation to goods that are not produced in a true geographical source. It protects geographical indications for agricultural products, food, and spirits comprehensively, and if a Member State’s internal law conflicts with Article 13 of European Community Directive No. 1151/2012, that law is implicitly void.

Consumer interests are not served by prohibiting these uses, nor is the flow of accurate information ensured by prohibiting these uses. Instead, geographical indications protection allows producers to maximize consumer association of the place name with

the product's nongeographic qualities without having to worry about the term becoming generic.

This is why geographical indication need protection, because they convey both their geographic origin and their product's attributes. For a product to be truly valuable, it must be able to communicate its features and quality. If the place name becomes synonymous with quality and less associated with a specific location, traditional producers may lose their ability to distinguish their products from those produced elsewhere. The likelihood of this is especially high for customers who have no prior knowledge of the establishment.

Investigating the protection of geographical indications under TRIPs Agreement

The TRIPs Agreement establishes the criteria for geographical indication protection in Part 2, section 3, which is comprised of articles 22-24. However, pursuant to article 2 (1) of the TRIPs Agreement, and in particular the principles of the Paris Convention, the principles set forth in articles 9 and 10 on geographical indications shall be applied by member states of the World Trade Organization and the TRIPs Agreement (Kuanpoth, 2004 p. 67), which can be considered three distinct forms of protection for geographical indications in the following ways;

In the first place, article 22 of the TRIPs Agreement protects geographical indications for general goods, where article 22 (1) defines geographical indications as "...indications which identify a good as originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin". Additionally, article 22 (4) protects against the use of genuine geographical indications that mislead consumers into believing the product originated elsewhere. Additionally, members must refuse or invalidate trademark registrations containing or consisting of geographical indications for goods not originated in the indicated territory if the use of such indications in the trademark for such goods is to such an extent as to mislead the general public about the true source of those goods, as defined in article 22 (3).

The second is the protection of geographical indications for wine and spirits under article 23 of the TRIPs Agreement, which in many ways provides a higher level of protection

than protection for general goods, namely: (1) when it comes to geographical indications for wine and spirits, member states must establish legal safeguards to prevent the use of geographical indications for wine and spirits on wine and spirits that do not originate in the geographical indication's origin country. As can be seen, there are no conditions, as there are in the case of geographical indication protection for other types of goods, that require the use of the geographical indication to have characteristics that may cause public confusion and misunderstanding or is characterized by unfair competition, which lowers the burden of proof for geographical indications for wine and spirits. Additionally, this geographical indication protection for wines and spirits prohibits the use of geographical indications that, despite indicating the true origin of the goods, are used in translations or in conjunction with any text containing the terms style, type, kind, imitation, or any similar wording. For instance, a liquor product from Thailand that clearly identifies its genuine origins but is afterwards marketed as the same spirit as French champagne is an infraction regardless of whether consumers are misled, delusory, or the result of unfair competition; (2) Restriction prohibiting member states from registering trademarks for wines and spirits that contain or incorporate geographical indications for wine and spirits if the wines and spirits are not of genuine origin. As can be seen, there is no requirement that the mark be used in a way that creates confusion and misunderstandings, as there is with geographical indication protection for general items.

Third, a geographical indication for wine products with the same colloquial name will be protected in order to prevent consumers from being misled about the product's origins using Geographic indications with the same colloquial name. On the other hand, the protection of geographical indications for general goods precludes the use of geographical indications bearing the same name as those mentioned above. To ensure the success of the TRIPs Agreement's negotiations on geographical indications, several significant exceptions for member states have been incorporated into article 24 of the TRIPs Agreement. First and foremost, nationals of member states who have used a Geographical Indication for wine and spirits prior to April 15, 1994 can apply for Geographical Indication protection if the geographical indication has been used continuously and for at least 10 years prior to April 15, 1994, or if the geographical indication has been used in good faith. However, because this exemption does not apply to general products, it does not benefit countries whose primary commodities are not wine and spirits. Therefore,

nationals of member states who have used geographical indications for goods other than wine and spirits are not exempt from this provision. Second, the protection of geographical indications under this TRIPs Agreement shall not jeopardize the integrity of trademarks that are identical to or similar to geographical indications that were applied for or registered in good faith prior to the date on which this TRIPs Agreement enters into force or prior to the date on which the geographical indication is protected in its country of origin. Third, the protection of geographical indications that are common names, whether names, any statements that are recognized by customs as customary names in the common language of a member state, results in nationals of that member state being able to use the generic name even if it is a protected geographical indication in that member state. (Kuanpoth, 2004 p. 78) A common name is one that is used to refer to or identify a product directly, rather than being the name or thing that indicates the product's origin. Danish Pastry, for example, originated in Denmark but is now classified as a type of bread.² Fourthly, it has no effect on the commercial use of that person's or ancestor's name, unless it is used in a way that confuses the public, such as having a person whose name is the name of a country or state; in that case, the person may use the name in their own trade, etc. Finally, protection of member states that do not require geographical indication protection for geographical indications that are not protected in the country of origin of the geographical indication or for geographical indications that have expired.

As a matter of international law, the TRIPs Agreement, unlike the Paris Convention, Madrid Agreement, or Lisbon Agreement, provides for a broader coverage of geographical indications with terms and conditions. However, the TRIPs Agreement is only a minimum requirement for member states to use as a guideline when enacting domestic legislation in accordance with the TRIPs Agreement. As a result, member states, particularly developing countries that have not yet pushed for geographical indication protection, opt for the bare minimum level of protection, which conflicts with the requirements of countries that require a high level of protection for geographical indications.

² Agreement on Trade-Related Aspects of Intellectual Property Rights: Article 24(9) "There shall be no obligation under this Agreement to protect geographical indications which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country."

Furthermore, the agreement contains no rules governing the use of geographical indications in the context of migration or the sharing of benefits associated with the use of geographical indications. Thus, the use of geographical indication in the context of local immigration and the sharing of benefits derived from such use are novel concepts that have not been discussed in any way under international law governing such matters.

Implications of community migration on geographical indication protection

Apart from the fact that geographical indications are community rights, not individual rights, another characteristic of geographical indications is that there must be a connection between man and nature, which is critical for ensuring that geographical indications are protected under the law. Thus, exploitation of a geographical indication must be limited to the individual or community residing in that geographic location. In the case of natural migration, direct application of the geographical indication's name to newly produced goods is not permitted. This is because the body of knowledge or indigenous wisdom used in the manufacture of goods is completely disconnected from its geographical origin. As a result, the product lacks the status of a geographical indication, which is necessary for distinguishing the geographical indication from a similar product produced by another source. Additionally, when examining the Geographical Indication Protection Act B.E. 2546 (2003), it is clear that no provisions govern the sale, distribution, transfer, or authorization of non-communal persons to use the geographical indication in any way. Furthermore, the principle of benefit-sharing is not embodied in the use of the words "kind," "style," or "type," or the like in conjunction with geographical indications in goods manufactured in other geographic sources, with the migration of people in the community as a result.

Although the distinctive character of a geographical indication necessitates a connection between the body of knowledge and the unique geographical source in order to qualify for legal protection, the geographical indication cannot be used in cases of migration. While some geographical indications are well-known, others rely solely on local knowledge or wisdom, with no connection between the body of knowledge and geographical factors, but they can still be protected by law under certain conditions. Consequently, it should be noted that in such cases, the benefit-sharing principle can be applied in the case of the use of the words "kind", "style", "type", or the like in

conjunction with a geographical indication in goods manufactured in a new geographical origin, whether in the case of migration or not. On the other hand, the Geographical Indication Protection Act, B.E. 2546 (2003), does not have any parts that would support this point of view. When considering the protection of geographical indications in the context of migration issues, two critical aspects must be considered: 1) the use of a geographical indication as a synonym for the words “kind”, “style”, or “type”, or any other similar word or phrase, in conjunction with the newly manufactured geographical indication, whether or not the immigration is contrary to the spirit of the law providing protection.; 2) Should the quality of newly manufactured goods be regulated if a migrant is permitted to use the original geographical indication name in the form of the words “kind”, “style”, “type”, or any other word or phrase similar to these in conjunction with remanufactured geographical indications?

Research Results

The quality and standard of the goods are critical to the geographical indication because they affect the goods’ reputation. For the manufacturer or producer, the quality and standard of the product also serve as a marketing tool, increasing the product’s value as a geographical indication. Additionally, the quality and standard of the product communicates to consumers that the product or goods is of origin or originated from a particular source or location. The source or product of origin must be identifiable in such a way that the consumer understands that the goods or products are distinct from similar goods or products produced from other sources. In addition to this, product or goods quality and standards are also a mark of origin that certifies the goods or product’s quality without being certified by any organization, such as raw materials used in production, manufacturing processes, or manufacturing methods. According to the TRIPs Agreement, the criteria and conditions for the protection of geographical indications are as follows: the goods or products must have a link between a body of knowledge and the characteristics of the geographical origin, or they must be well-known because of the use of local knowledge or wisdom of the community that produces the product to create a geographical indication that completes the components of the legally registered protection. Article 22 (1) of the TRIPs Agreement establishes international legal measures that specifically protect geographical indications. Additionally, it is a standard that member

states must apply in their domestic legislation in order to protect geographical indications. This is because geographical indications that are to be protected must be of high quality and conform to the standards established by the country's laws.

While the protection of geographical indication in Thailand is primarily concerned with the protection of goods that have distinctive characteristics or goods that are linked to the characteristics of geographical origin or a product's reputation, it also seeks to protect goods that identify the source, standard, and quality of the goods. There are two purposes for this: first, to protect the rights of communities that benefit from the reputation of a geographical indication; and second, to ensure that consumers are not confused or misled as to the origin of a product by distinguishing between the standards and quality of the same product produced from other sources.

The significance of the quality and standards of such products has been recognized by many countries, and has been incorporated into national legislation to protect geographical indications. According to India's legislation, a geographical indication relating to goods is defined as "something that is used to identify a commodity as an agricultural commodity, natural goods, or goods that are produced in their place of origin or are produced on the territory of a country or in a territory or place within a country" until it is recognized for its quality and reputation, or the characteristics of a particular product that distinguishes it as a commodity of that geography, territory, or place in a country. (International Institute for Asia Pacific Studies, n.d.) When a product is protected under French intellectual property law, the geographical name of a country, region, or place that indicates that the product originated from that location must be included. This protection must also include the product's quality, properties, or characteristics that are influenced by the geographical environment, as well as natural and human factors.

It is necessary to maintain higher quality and special standards for geographically indicated products compared to the same products produced from other geographical sources. Pisco is a liquor product that is the subject of a heated debate and disagreement over its quality. Pisco comes from the Quechua language and means "bird."³ Since the year 1556, it has been a geographical indication product with its origins in South America. The Spaniards were the first to introduce grapes to the region, and they were also the first

³ The Court of Appeal for Specialized Cases, verdict 2982/2563.

to cultivate them. Its primary function was the production of wine and spirits. Since the port of Pisco was established in the 16th century, it has been regarded as the center of the liquor trade, not only for Peruvian wines and spirits, but also for wines and spirits from Chile at the time. By the mid-16th century, grapes were being transported to the geographic region of La Serena, where wine was being produced at a rapid rate, and were being transported in pottery liquid storage containers known as “Piscos.” Later, during the 18th century, the wine export trade experienced tremendous growth, particularly in the La Serena region, which stretched from the port of “Coquimbo,” where the wine was delivered, to the port of “Pisco”, and was an area with high consumption. Therefore, it can be said that the name “Pisco” has been used to refer to the spirits of both the entire Chilean country and the ancient Peruvian country for more than four centuries, referring to the spirits of both countries.

Peru and Chile later applied for geographical indication registration in Thailand. Peru asserts ownership of the genuine and authentic Pisco geographical indication for Liquor, which has been used and registered in Thailand and throughout the world, thus opposing the registration of geographical indications “Pisco Chile” in response to request No. 50200030 submitted on January 11, 2007 on behalf of “Association de Productorres ds Piscoile AG.” for “Liquor” products. Peru contended that allowing Chile to register the geographical indication “Pisco Chile” would confuse the Thai consumer public about the origins of “Pisco,” which has long been associated with the Republic of Peru, and “Pisco,” which is associated with Chile’s later geographic name change. Peru continues by claiming that Pisco is a geographical designation for Peru and bears no resemblance to any particular Chilean region or cultural heritage. Additionally, the original Pisco production process does not require the addition of sugar or water, in contrast to the Chilean Pisco production process, which allows for the addition of sugar and water. As a result, Chilean Pisco products are of lower quality than Peruvian Pisco products.⁴ Additionally, Chilean Pisco spirits are classified solely on the basis of their alcohol content, ignoring the unique manufacturing process and the use of modern distillation equipment, which, unlike Peruvian Pisco, results from a manufacturing process that adheres to strict standards for appearance, color, smell, and flavor, as well as chemical and

⁴ Department of Intellectual Property. Meeting Committee of Geographical Indications. 1/2020. March 3, 2020.

physical composition, in a traditional, long-standing manner dating all the way back to the early 17th century only in the region of Peru. Chile refutes Peru's argument that historical details, maps, academic works, and historical records, whether true or false, are irrelevant when considering the registration of a Chilean geographical indication in Thailand, because the items mentioned above may not serve as a guideline for establishing identical or congruent geographical indication criteria, but rather are products with distinct geographical origins in Thailand in this case. This is due to the fact that the application for registration of geographical indications in Thailand must be considered in light of the criteria and methods set forth by Thai law, which are critical considerations.

As a result, Chile argues that, because Chile has been operating in good faith for more than four decades under the term "Pisco", Chile has the right to receive the "Pisco Chile" geographical indication registration in Thailand; and because the application for geographical indication registration has been filed in a timely and proper manner, the justification for Peru's opinion cannot be used to demonstrate Chile's integrity. Thus, the Geographical Indication "Pisco Chile" is preferred to be registered implicitly pursuant to article 29 of the Geographical Indication Act B.E. 2546 (2003) in conjunction with the Ministerial Regulation Prescribing List of Specific Goods and Rules and Methods for Use of Similar or Identical Geographical Indication B.E. 2547 (2004). Chile maintains that the addition of the word "Chile" denotes the country. It is a component of the term applied for registration above in accordance with the provisions of section 29 of the Geographical Indication Act, B.E. 2546 (2003), in conjunction with the provisions of Ministerial Regulation Prescribing List of Specific Goods and Rules and Methods for Use of Similar or Identical Geographical Indication B.E. 2547 (2004). Chile is adamant that the Thai public and consumers will not be able to distinguish the geographical origin and quality of the product. As a result, the arbitration panel came to the conclusion that, despite the fact that Chile does not have Pisco territories, the use of the term "Pisco" as the geographical origin of Chile is in violation of section 28, paragraph two of the Act. However, upon examination of the documents submitted by the applicant for registration at the registrar level, it is clear that Chile used the term "Pisco" in good faith in its foreign spirits prior to April 15, 1994, via geographical indications prior to 15 April 1994, in accordance with article 28, the last paragraph, which states that the geographical indication "Pisco" may be used anywhere in a TRIPs member state when an applicant submits documents containing

the term “Pisco” ten consecutive years prior to April 15, 1994. Therefore, the registration of geographical indication “Pisco Chile” of the applicant is entitled to be registered without contravening the last paragraph of article 28 of the Geographical Indication Act B.E.2546 (2003).⁵

As a result of this fact, it is clear that, despite the dispute between Peru and Chile over the right to use the name “Pisco”, the primary source of contention is the debate over the original quality and standard of Pisco spirits, which escalated into an international dispute over the quality and standard of Pisco liquor. It is therefore critical to ensure that the quality and standard of geographical indication is maintained in order for each community’s geographical indication products to be accepted by consumers as being significantly different from the same product produced in another geographic source.

It is also important to note that the problem of international control over the quality and standardization of geographical indications raises important examples of their use in the context of international immigration, which is a violation of the community rights of the country that originated the geographical indication in question. The use of geographical indications in the event of international migration may degrade the quality and standard of goods or products, as the uniqueness of the original geographical origin cannot be taken with them and does not have the ability to control the standard of the product or goods. As was the case in the United States and France, where a dispute arose over France’s geographical indication for Champagne in the event that France and the United States engaged in a champagne dispute. That is, the migration of people living in a geographic area and the application of a geographical indication to other sources creates conditions for the protection of a geographical indication such that the connection between the body of knowledge and the geographic source must be severed, as was the case with the use of the wisdom of French champagne production. Additionally, winemakers in the United States use the term “champagne” on their labels even when their wines are not produced in France. While the United States has adopted the same production methods as all French champagne producers, this does not mean that the standards and quality of American champagne are identical to those produced in France. Due to the unique

⁵ Department of Intellectual Property. Meeting Committee of Geographical Indications. 2/2017. September 4, 2017.

qualities of geographical sources, using geographical indications in the case of migration would lead to a lack of knowledge about the production of goods or products from geographical sources and would violate the rights of the people's community.

When the product's quality and standard are critical components of a geographical indication and the resulting unique goods differ from those of similar geographical indication goods produced from other geographic sources, the goods or products covered by the geographical indication shall be those derived from indigenous knowledge or traditional knowledge associated with the characteristics of a geographical indication. A geographical indication also includes a body of knowledge or local wisdom that is unique to a community in a certain area, and that such geographical indications will show the origin or origin of the product or product to the quality and standard of goods or products that are different from the same goods or products made by another source.

Thus, in the case of geographical indication products that require a connection to natural factors, the use of a geographical indication in the form of the words "kind", "style", "type" or the like in conjunction with a newly manufactured geographical indication product in a new geographic source is migration of people within the community. If a geographical indication product is produced in a new geographical location to which a person has relocated, the natural factors in the new geographical location are different than those in the original geographical origin, whether it is a natural feature such as soil, water, wind, or temperature that varies geographically. Geographical indication products linked to natural factors in different geographic sources will invariably differ in quality from those produced in the original geographical origin in terms of geographical indication products. Therefore, it is impossible to ensure that the quality and standards of products bearing the geographical indication in a new geographical location are identical to those in the original geographical location.

However, when it comes to Thailand's current laws protecting geographical indications, there are only two: the Geographical Indication Protection Act, B.E. 2546; and the Ministerial Regulation Prescribing List of Specific Goods and Rules and Methods for Use of Similar or Identical Geographical Indication, B.E. 2547, which protects specific goods such as rice, silk, wine, and spirits by prohibiting the misrepresentation of the goods' true geographical origin. This includes the provision prohibiting the use of the terms "kind,"

“style,” or “type,” or any similar term or phrase, in conjunction with a geographical indication applied to the goods. Products that must be connected to other geographical sources, such as non-durian, Doi Chaang coffee, or Mor Phrae cloth (Notifications of the Department of Intellectual Property. 2020), are not protected as specific products, allowing the use of the term in conjunction with geographical indications that apply to goods in cases of migration of people within the community to be done without breaking the law. Although it is possible that the law will permit migrants to use an abbreviation for geographical indications that must be associated with newly-produced geographic sources in the event of migration, this will cause people to be confused and misled as to the quality and true standards of the products, which will have an impact on the community producing geographical indication products by relying on the connection with geographical sources in the field of unfair competition. Additionally, it affects the right to use geographical indication, which is a community right that should be shared by all members of the community producing geographical indication products that rely on their connection to geographical sources. When people immigrate into a community, it will be necessary to make changes to legal guidelines that protect geographical indications in the form of an abbreviation for those indications that require a connection to a geographical source. This will help protect geographical indications in a way that is fair to the communities that make products with geographical indications.

In the case of geographical indications that do not require a connection to geographical sources, that is, where the manufacturing process does not require geographical factors, such as Bo Sang umbrellas, grilled pork products such as Trang, and so on. Although the manufacturing process, including the raw materials used in the production of the product, is not dependent on geographic origin, producers can use raw materials of the same quality as those from the original geographic source without jeopardizing the product's nature or quality, and it also contributes to the economic development of the community. More specifically, economic development and social development for the communities in which the product manufacturers have relocated are the primary goals here. As a result, one of the primary goals of protecting geographical indications is to prevent consumers from being confused about the product's origin and from being damaged by receiving or consuming products that are not of the desired quality. Geographical indications that are not linked to a specific location can cause issues with

standard quality control of goods produced in a new location when they are used with the term. Consider the following scenario: A migrant produces goods using raw materials that are either better or worse quality than those used in the original community. The quality and standards of the goods that are generally known to consumers may be altered. It could also happen that those who migrated to use the body of knowledge or local knowledge that had been transferred from the old community to the new community, resulting in products that are similar to those from the same geographical source but using the term in conjunction with newly-produced geographical indications. In Trang, there is a producer of grilled pork products who relocated from Trang Province to Chiang Mai Province and produces grilled pork products using the same type of pork that was previously produced in Trang, but by grilling with bamboo rather than with charcoal, the smell of roast pork differs from the smell of roast pork produced in Trang, and uses the term in conjunction with the newly produced geographical indication “Chiang Mai Roasted Pork Trang Roasted Pork Recipe,” for example.⁶

When geographical indications are used, it can be seen that it is difficult to control the quality and standards of goods produced outside of the original geographical location, whether it is controlling the use of raw materials in the production of goods or controlling the manufacturing process. This is because Thailand grants the right to use the term in conjunction with geographical indication on products other than rice, silk, wine, and spirits that bear a geographical indication. Therefore, if the term is used in conjunction with a geographical indication that is not linked to a geographic source in the event of mass immigration into a community without regard for the rules governing the use of the term in conjunction with a geographical indication, it can create confusion and misunderstandings about the product’s origin and may even result in the consumer not receiving the desired quality. Nonetheless, there is currently no legal standard that can be applied to such cases. Consequently, in this case, it is necessary to amend the criteria for quality control and standards of geographical indication products in the event that the words “kind,” “style,” or “type,” or similar words or things are used in conjunction with the geographical indication but have no connection to a geographical source. Economic and social development should be governed by clear legal regulations, which ensure fairness for

⁶ Department of Intellectual Property. Roast pork or moo yang, a Trang specialty. 2006 (2006 2, May) Number 49100004.

the former community while also providing clarity for those involved in the development process.

Discussion and Conclusion

If there is a migration of people within a community and the terms “kind”, “style”, or “type,” or similar words or phrases are used in conjunction with newly produced geographical indications other than rice, silk, wine, or spirits that require a connection between the body of knowledge and the specific factors of geographical origin, this may result in a decrease in the quality and standard of goods or products as a result of changing natural factors. As a result, the quality and standard are different, making it difficult to control the quality of goods or products that have been remanufactured using the term associated with the newly produced geographical indication, but the newly produced goods are of lower quality than those from the original geographical origin. This results in the public being confused or misled about the product’s source or origin. In the case of geographical indications that are based solely on knowledge and reputation of products other than rice, silk, wine, and spirits, the term can be used in conjunction with geographical indications in newly manufactured products in the event of community relocation; while this is possible, there are also issues with controlling the quality or standards of newly manufactured products.

Consequently, registration of goods’ quality and standardization, as well as obtaining permission to use the terms “kind,” “style,” or “type” or similar words or equivalents in conjunction with a geographical indication in the event of community migration, is critical in order to establish a standardized system and criteria for the protection of such products.

Concerning the registration of geographical indications, section 9 of the Geographical Indication Protection Act, B.E. 2546, states that “Applications for registration of geographical indications shall be made in accordance with the rules and procedures set out in the Ministerial Regulations” and Chapter 2 of the Ministerial Regulations on Criteria and Procedures for Registration of Advertising Announcements Objection and Controversy Regarding Objection to Registration Appeal and Amendment or Revocation of Register of Geographical Indications, B.E. 2547.

Application for registration of geographical indications

Article 9: A geographical indication registration application must contain at the very least the information listed below.

- (1) information about the applicant for registration as specified in the form
- (2) a name, symbol, or other identifier used to refer to or represent a geographic source;
- (3) a list of products incorporating geographical indications
- (4) specific information about the property trade's quality, reputation, qualification, or other distinguishing characteristics through the use of geographical indications
- (5) details establishing a connection between the goods bearing the geographical indication and their geographical origin;
- (6) details establishing the geographic source for registration's location;
- (7) details establishing the geographical indication's use on the product label.
- (8) the applicant's signature and the date of the signature.

Nevertheless, the determination of quality and the Geographical Indication product standard are governed by the Protection of Geographical Indications Act, B.E. 2546 (2003), Section 9, and the Ministerial Regulation on Ministerial Regulations on Criteria and Procedures for Registration of Advertising Announcements Objection and Controversy Regarding Objection to Registration Appeal and Amendment or Revocation of Register of Geographical Indications, B.E. 2547 contains no provisions relating to the determination of permission quality or the Geographical Indication product standard in the event of the use of the words "kind," "style," or "type" or similar words or similar things in conjunction with the geographical indication in the event of community migration in any way. As a result, laws protecting geographical indications should be enacted concurrently with the designation of geographical indication products in the same draft ministerial regulation:

(Draft) Ministerial Regulations:

The right to use, the application for permission to use, and the examination of requests for permission to use the terms "kind", "style", "type" or similar terms in conjunction with geographical indications for the purpose of determining the quality and standards of Geographical Indication Products and benefit sharing BE....

By virtue of Section 4, Section 7, Section 25, Section 26 and Section 28 of the Geographical Indication Protection Act B.E. 2546 which contains some provisions regarding the limitation of rights and liberty of a person, whereas Section 25 Paragraph 2 coupled with Section 40 of the Constitution of the Kingdom of Thailand prescribes permission to take such an action by virtue of authority in accordance with the provisions of law, the Commerce Minister shall issue the Ministerial Regulations as follows:

Article 2

(1) The use of geographical indications, which are products associated with natural factors and traditional knowledge, in the same way that “kind”, “style”, “type” or words or the like in conjunction with geographical indications are not permitted in all cases.

(2) The use of geographical indications, which are goods produced solely with indigenous knowledge, can be done in conjunction with geographical indications or words or similar things, but only after obtaining permission from the official, passing the criteria for determining the qualifications of the person exercising such rights, and passing the product’s quality and standard.

(3) Individuals who are not members of the community or who have never produced Geographical Indication Products in the former community are ineligible to file an application under (2).

Article 3 Applicants under Clause 2 (2) are required to demonstrate to the Registrar that they were a producer of Geographical Indication Products in the original community and that the products they produce are of comparable quality and standards to those produced by the community in accordance with the traditional geographical origin.

Article 4 When the Registrar receives an application for the use of the terms “kind”, “style”, “type” or any similar word or thing in conjunction with a geographical indication or a similar word or thing, the Registrar has the authority to dismiss the request if there is evidence that the application is unlawful, deception, or contains a list of misrepresentations made at the time of application.

Article 5 In the case of article 4, if subsequent evidence establishes that the application for permission to exercise such right was made unlawfully or through deception, or contains a list of misrepresentations, the Registrar shall refer the matter to

the Board for a decision to revoke such rights.

Article 6 The Regulations shall come into force on the date B.E. onwards

In summary, the researcher is of an opinion that establishing the right to use the terms “kind”, “style”, or “type”, or any other word or phrase similar to those above in conjunction with a geographical indication or words or phrases similar to those above will enable effective quality control and standards for geographical indication products. Furthermore, the standard quality inspection procedures, as well as the process of submitting evidence to demonstrate that they are the legitimate manufacturer of geographical indication products in the original community, are required. This includes a review by an official before allowing the use of the words “kind”, “style”, “type”, or any other similar words or phrases with a geographical indication or similar words or phrases in the case of community migration. This is consistent with the search-cost reduction theory. This enables consumers to determine the origin of the products they wish to purchase in advance and what is the true standard of quality? This effectively eliminates the possibility of misusing geographical indication in a way that jeopardizes the reputation of geographically indicated products produced in their actual geographical origin.

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